

Amendments to the Drawings

In accordance with 37 CFR § 1.121(d)(1), attached hereto are two annotated sheets depicting changes made to drawing Figures 5 and 8. The attached Figure 5 has been amended to designate the bottom seam with reference number 205 (see specification page 3, lines 26-27, and page 5, line 1 (as corrected)). The attached Figure 8 has been amended to add the arrowed lead lines associated with element 230, the web-cutting and welding station, and element 240, the needling station (i.e., as shown in Figure 7).

Also attached hereto are two replacement sheets of drawings, incorporating the changes made to Figures 5 and 8, which replace the drawing sheets originally submitted with the application.

Remarks

Reconsideration and allowance of this application, as amended, are respectfully requested.

The written description portion of the specification, claims 1-8, the abstract of the disclosure, and the drawing figures have been amended. New claims 14-16 have been added to further define the scope of protection sought for Applicants' invention. Claims 1-16 are now pending in the application, with claims 9-13 withdrawn from consideration as being directed to a non-elected invention. Claims 1, 9, 10, and 14 are independent. The rejections are respectfully submitted to be obviated in view of the amendments and remarks presented herein. No new matter has been introduced through the foregoing amendments.

The specification has been editorially amended for conformance with 37 CFR § 1.77(c), for consistency, and to correct any informalities. The abstract has been editorially amended for conformance with 37 CFR § 1.72(b). The claims have been amended to overcome the rejections under 35 U.S.C. § 112, first and second paragraphs, and, in general, so as to more fully comply with U.S. practice. The drawing figures have been amended as described above in the "Amendments to the Drawings" section.

Entry of each of the amendments is respectfully requested.

Applicants acknowledge with gratitude the examiner's withdrawal of the prior art reference, U.S. Patent No. 6,360,916 to

Sokolsky et al., that was applied in the restriction requirement imposed by the U.S. Patent and Trademark Office ("USPTO") in the Office Action of April 12, 2010 (i.e., between the claims of Group I, claims 1-8, drawn to a gusseted bag; Group II, claim 9, drawn to a method of producing and filling a gusseted bag; and Group III, claims 10-13, drawn to a machine that uses a gusseted bag). Based on Applicants' traversal in the Response to Restriction Requirement filed August 11, 2010, the examiner concedes that Sokolsky fails to teach the common technical feature of the instant invention, i.e., the claimed "perforation" (Office Action page 2, numbered paragraph 1).

Now, the examiner maintains the restriction requirement, but bases it on the disclosure of a newly-applied prior art reference, U.S. Patent No. 5,558,438 to Warr. However, for the reasons presented below in response to the rejection under 35 U.S.C. § 103(a), Applicants respectfully traverse the restriction requirement based on Warr for reasons analogous to those presented in the Response to Restriction Requirement with respect to Sokolsky.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the restriction with respect to claims 9-13, and request examination of all of now pending claims 1-16.

35 U.S.C. § 103(a) - Beer and Warr

Claims 1-8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,060,803 to Beer et al. (hereinafter "Beer") in view of U.S. Patent No. 5,558,438 to Warr.

The Office Action states that "Beer discloses a FFS-capable gusset bag comprising a tear-open perforation (46) at least in the area of one of the corners of the bag, wherein the bag comprises a cross-weld seal (40B) in the area of at least one corner." The Office Action then acknowledges that "Beer does not expressly disclose that the forming of the tear-open perforation in the area of at least one corner is changed in such a way that the perforation in the interspace between the edge of the bag and the corner weld seal is provided in a different manner as compared to the perforation between the corner weld seal and the centerline of the bag." The Office Action then asserts, however, that "Warr teaches providing a tear open perforation that changes shape across a heat seal (Fig. 1, 23, 21)" (all quotations from Office Action, page 4).

The Office Action concludes that "[b]ecause Warr and Beer both teach tear opening perforations for the opening of a pouch, it would have been obvious to one of ordinary skill in the art to substitute the notch and line of perforations taught by Warr for the notch taught by Beer to achieve the predictable result of opening the pouch."

The rejection of claims 1-8 under § 103(a) based on Beer and Warr is respectfully traversed. For at least the following reasons, the combined disclosures of Beer and Warr would not have rendered obvious Applicants' claimed invention.

Before turning to the remarks in support of the patentability of the instant claims, Applicants first wish to remind the examiner of the concession made by the USPTO in the Office Action of April 12, 2010: "the common technical feature of the inventions is **the change in tear perforation form across a heat seal**" (Office Action of April 12, 2010, page 2, numbered paragraph 2) (emphasis added). In view of the above-quoted statement by the examiner, *and that statement alone*, all of claims 1-13, even as previously presented, should be deemed to be immediately patentable over the asserted Beer/Warr combination.

The combined disclosures of Beer and Warr do not teach all of Applicants' claimed features. Beer is deficient, of course, for at least the reasons acknowledged in the Office Action.

Further, Applicants respectfully submit that the Office Action unfairly characterizes certain features of the Beer disclosure. The Beer patent is directed to a "Gussetted Flexible Package with Tear Notch to Form Pour Spout" (emphasis added). The Office Action asserts in pertinent part that "Beer discloses a FFS-capable gusset bag comprising a tear-open *perforation (46)*" (emphasis added). Applicants respectfully disagree with the

examiner's characterization of Beer's "notches 46 . . . for forming the pour spout" (see Beer column 4, lines 52-54) as "a tear-open perforation (46)."

A notch is not a perforation. For reference with regard to such terminology, see Applicants' remarks in the Response to Restriction Requirement with respect to the deficiencies of the Sokolsky patent. In the Response to Restriction Requirement, Applicants urged the following:

Sokolsky teaches "[a] tear-assisting serration, slot or cut portion 65." See in Figure 1 the triangular-shaped opening that is the "serration, slot or cut portion 65." A slot or a cut is certainly not Applicants' claimed feature of a tear-open "perforation." And, a "serration" is not a "perforation." The word "serration" is defined as "the state of being serrate." The word "serrate" is defined as "having notched, toothlike projections," *The American Heritage Dictionary*. Therefore, Sokolsky's "tear-assisting serration, slot or cut portion 65" is structurally different from Applicants' claimed "perforation" feature.

The same logic applies with respect to the examiner's new assertion that Beer discloses "a tear-open perforation." See the depiction of "notches 46" in Beer's Figure 1. A notch is certainly not Applicants' claimed feature of a tear-open "perforation." The word "notch" is defined as "a V-shaped cut," *The American Heritage Dictionary*. Therefore, each of Beer's "notches 46" is structurally different from Applicants' claimed "perforation" feature.

Claim 1 has been amended to overcome the rejection under 35 U.S.C. § 112, second paragraph, and so as to more fully comply

with U.S. practice. Claim 1 defines a bag that includes, *inter alia*, a tear-open perforation and a corner weld seal. Instant claim 1 requires a "tear-open perforation [that includes] at least one first perforation incision provided in an interspace between an edge of the bag and the corner weld seal that has a different structure relative to at least one second perforation incision provided between the corner weld seal and a centerline (M) of the bag."

Beer, however, has no disclosure whatsoever of Applicants' required "tear-open perforation." Beer's notch 46 is encircled by the seals 40 and 40B. As a result, a pour spout is formed when the package is torn open (see Beer's Figure 4).

That is not Applicants' claimed bag, which requires in pertinent part a tear-open perforation having "at least one first perforation incision provided in an interspace between an edge of the bag and the corner weld seal that has a different structure relative to at least one second perforation incision provided between the corner weld seal and a centerline (M) of the bag."

The Office Action relies upon the disclosure of Warr to rectify the deficiencies of Beer. But the disclosure of Warr is deficient as well. Warr discloses (column 4, lines 6-17) a bag 10 that

includes a line of perforations 21, which extend laterally outwardly along the walls 11 and 12 to the side edge 13 just below the seal 22. The line of perforations 21 comprises two line segments: a line segment of perforations 21A which extends from immediately below the

top end edge 15 perpendicular to the top end edge 15 and parallel to the first and second side edges 11 and 12, and a line segment of perforations 21B extending from the adjacent end of the line segment 21A to the closer side edge 13.

A notch 23 in both the walls 11 and 12 communicating with the top end edge 15 at the adjacent end of the line segment 21A forms a place to start the tear.

That is, Warr teaches a "notch 23" that provides a location "to start the tear" to open the bag, "a line segment of perforations 21A," and "a line segment of perforations 21B." The line of perforations 21 simply appears to change direction below seam 19 (see Warr's Figure 1). Warr fails to disclose any structural difference between the line segments of perforations 21A and 21B.

Thus, the asserted Beer/Warr combination fails to teach, *inter alia*, Applicants' claimed feature of a tear-open perforation having first and second perforation incisions that are structurally different from one another. Consequently, the combined disclosures of Beer and Warr fail to meet each feature of the claimed invention.

Furthermore, there is simply no teaching in Beer and Warr that would have led one to select the references and combine them, let alone in a way that would result in the invention defined by Applicants' instant claim 1.

More specifically, in view of Beer's teaching of "notches 46 . . . for forming the pour spout," for the Office

Action to assert that "it would have been obvious . . . to substitute the notch and line of perforations taught by Warr for the notch taught by Beer to achieve the predictable result of *opening the pouch,*" is illogical. Beer's package requires nothing more than the notches 46 alone in order to form the pour spout for pouring. And, using such logic constitutes an *improper hindsight reconstruction* on the part of the examiner. The hindsight reconstruction is *improper* because it depends upon the disclosure of the *instant application*.

Therefore, the combined disclosures of Beer and Warr would not have rendered obvious the invention defined by instant claim 1. Claims 2-8 are allowable because they depend from claim 1, and for the subject matter recited therein.

And again, as explained above, since Warr fails to teach the common technical feature of the instant invention, i.e., the claimed "tear-open perforation," Applicants respectfully request reconsideration and withdrawal of the restriction with respect to claims 9-13, and request examination of all of now pending claims 1-16.

New claims 14-16 have been added to further define the scope of protection sought for Applicants' invention. New claims 14-16 are also allowable. Claim 14 defines an embodiment of the invention in which "the first perforation incision ha[s] a length larger than a length of the second perforation incision." Claim 15

requires that "the length of or a periphery of at least the second perforation incision is smaller than a periphery of a grain of a material contained by the bag." Claim 16 defines an embodiment of the bag in which "the tear-open perforation includes a plurality of at least one of the first perforation incision and the second perforation incision."

Since independent claim 14 includes at least the features discussed above with respect to the rejection over Beer and Warr, the references neither anticipate nor would have rendered obvious the embodiment of the bag defined by claims 14-16.

In view of the foregoing, this application is now in condition for allowance. If the examiner believes that an interview might expedite prosecution, the examiner is invited to contact the undersigned.

Respectfully submitted,

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